

REMARKS

Applicants thank the Examiner for the courtesy extended in a telephonic interview conducted on March 8, 2005, which materially advanced prosecution of the case.

I. Error in Claim Numbering

Applicants have noted an error in the claim numbering. Pursuant to a Restriction Requirement (Paper No. 7, dated January 23, 2004), applicants elected claims 31 through 65 for prosecution on the merits. (See Response, Paper No. 8, dated February 17, 2004). In an August 24, 2004 Amendment (Paper No. 10), applicants added new claims "66 through 70." However, as claims 66 through 82 were already in the case (albeit withdrawn from consideration), these claims should be renumbered as claims 83 to 87. Applicants respectfully request that the Examiner renumber the claims pursuant to 37 C.F.R. §1.126, as set forth in the above Amendment.

II. Status of the Claims

Claims 31-65 and 83-87 are pending in this application, of which Claims 31, 37, 43, 48, 54, and 60 are in independent form. Claims 1-30 and 66-82 have been canceled, without prejudice or disclaimer of subject matter. Claims 31, 34, 37, 40, 43, 45, 48, 51, 54, 57, 60, 63, and 83-87 have been amended to define still more clearly what Applicants regard as their invention.

III. Rejections Over Prior Art

Claims 31-33, 37-39, 43, 44, 48-50, 54-56, 60-62 and 66 (now 83) have been rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent Publication No. 2002/0008751 (Spurgeon et al); Claims 34-36, 40-42, 45-47, 51-53, 57-59 and 63-65 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable

over Spurgeon et al in view of U.S. Patent No. 6,058,843 (Young). Claims 66-70 (now 83-87) have been rejected over Spurgeon in view of U.S. Patent No. 5,795,395 (Ben Matitahyu). These rejections are respectfully traversed and reconsideration is respectfully requested in view of the foregoing amendment and in light of these remarks.

IV. Argument

As discussed during the interview, the present claims are directed to systems that enable a user to select images and transmit them over a network so that they are printed directly on confectionery products. The invention embodied in these claims (and the business envisioned) is a consumer-driven system to make candy that has been consumer-customized with high resolution images. The subject systems are particularly adapted to printing of personalized candy in a kiosk or internet environment. A variety of confectionery products are contemplated, including sugar shelled candy such as M&M's® Peanut and Chocolate Candies.

As amended, all of the claims require printing “directly on a confectionery product.” The Examiner has insisted that “food product,” broadly interpreted, includes an edible transfer sheet. The foregoing amendment to the claims is made primarily to distinguish a system in which images are printed on edible transfer sheets. A consumer does not purchase an edible transfer sheet to eat as candy. Applicants submit that this issue, at least, is resolved by the present amendment: that the printing substrate according to the claims is not an edible transfer sheet.

A “confection,” as defined in The American Heritage® Dictionary of the English Language, Fourth Edition (2000), is “A sweet preparation, such as candy.” Likewise, “confectionery” is defined as “Candies and other confections considered as a

group.” Thus, generally speaking, confectionery is a synonym for candy, and would be understood as such by one of ordinary skill in the art.

Support for the Amendment may be found in the present specification at page 18, line 4. Specific examples of confectionery items that may be printed according to the invention include chocolates, sugar shell candy and hard candy, as set forth in original claim 77 (and see, for example, page 20, lines 10 to 17). Thus, it is clear that no new matter has been added.

The different nature of the edible substrate turns out to be a critical difference between the claimed invention and the system disclosed in Spurgeon, for the following reasons.

Spurgeon is directed to a “system for creating a decorative edible item from a selected image” (see Abstract), and the image may be selected from, or uploaded to, a network (see for example paragraph [0019]). However, the printing is performed on transfer sheets using a conventional ink-jet printer. Thus, one of the principal aspects of the system is that the printer does not have to be located at the same site as the edible. In Spurgeon, the transfer sheets may be printed in a location that is remote from the edible product, and applied to the edible product at a later time. Consequently, the configuration of the network is different.

In the description of the prior art, Spurgeon clearly distinguished systems in which printing is performed directly on a food product.

These systems [the prior art systems] also produce the decorations and images directly onto the food product. Since these food products are produced at the bakery, the decorated food product must then be transported to the event. Many times the decorated food product is damaged in transit. Also, this

increases the expense many times in transporting the entire decorated food product. (See para. [0008]).

The prior art described by Spurgeon in the above passage is similar to the prior art discussed below directed to cake decorating, and the like. Such apparatus would not be connected to a computer network, as there would be no reason, with such a cumbersome apparatus, to have an individual select the image at a remote location. Likewise, a purported advantage in Spurgeon is that the printer does not have to be on-site with the edible product to be decorated. There is no suggestion to create a network which includes a printer that prints directly onto an edible.

In fact, throughout the disclosure, Spurgeon maintains the asserted superiority of printing on the media versus on the edible product (“since the edible media is relatively thin and sturdy, it can be transported separately from the food product to minimize damage to the decorations.” (See para. [0018])). Thus, Spurgeon considers the use of a conventional ink-jet printer to be an advantage of the disclosed system. In contrast, the present claims require a system capable of printing directly on a confectionery product, and could not be used with a conventional sheet-fed printer. The use of a conventional ink-jet printer with a network is not the same as, and does not render obvious, a network that includes a printer that prints directly on confectionery products.

The secondary references, Young and Ben-Matitahyu, are both drawn to cake decorating systems. (See, for example, Young at col. 1, line 11; and Ben-Matitahyu at col. 1, lines 5-10). Young has more disclosure related to the image processing and printer, whereas Ben-Mitatahyu primarily discloses an apparatus for conveying the cake past the printhead. Both references envision the use of an ink-jet printer to process digital image information (see, for example, Young at col. 1, lines 30-32 and col. 2, lines 45-50;

and Ben-Matitahyu at col. 1, lines 20-25), but they do not disclose transmitting that information over a network.

Neither of these references discloses networking the subject printer with computers adapted to send and receive images over a network, so that a user may customize a confectionery product, as presently claimed. It would not have been obvious to integrate a cake decorating apparatus as disclosed in either Young or Ben-Matitahyu with such a network, at least because the reference does not provide motivation allowing for the consumer-driven selection as set forth in the presently claimed system.

Rather, the decoration of cakes seems to be a cumbersome process from which the ultimate consumer is likely excluded. At least, no mention of the consumer's interaction with the system is made in either reference.

In summary, prior art has been made of record that teaches printing on edibles, including methods for printing pharmaceutical tablets, apparatus and methods for printing decoration on cookies, cakes, and the like. However, this prior art does not disclose a networked system that allows the consumer to select images that are transmitted via a network and printed directly on a confectionery product to make candy customized by the consumer. The primary reference, Spurgeon, teaches a network, but that reference contains the significant limitation that printing is on edible transfer sheets. As noted above, a networked system that prints on a transfer sheet is conceptually and physically different from a system that prints directly on a confectionery product. The secondary references, on the other hand, teach computer-implemented decoration means, but they do not teach a networked system, and it would not have been obvious to network a printer that

prints directly on confectionery products, with computers enabling consumers to select images.

For at least the foregoing reasons, applicants submit that the claims as amended are allowable over the art of record and respectfully request that the application be passed to issue.

V. Comments On Examiner's Interview Summary

In the Interview Summary, dated March 14, 2005, the Examiner correctly notes that the term "food product" is to be replaced with "confectionery product," as set forth above. However, "confectionery products" is not limited to M&M's® Peanut and Chocolate Candies. M&M's® Brand Candies were discussed at the interview, and they are a preferred printed confectionery product according to the invention, however, M&M's® Brand Candies are only one type of confectionery product. Therefore, it is likely that the Examiner intended to use "e.g." (for example) rather than "i.e." (that is) when referring to M&M's® Brand Candies.

Applicants expressly reserve the right to prosecute claims in an appropriate divisional or continuation application, in which a broader or different food substrate is claimed, consistent with the original disclosure.

CONCLUSION

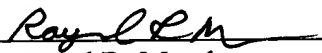
This Amendment After Final Action is believed clearly to place this application in condition for allowance and its entry is therefore believed proper under § 37 C.F.R. § 1.116. Entry of this Amendment After Final Action, as an earnest effort to advance prosecution and reduce the number of issues, is respectfully requested. Should the Examiner believe that issues remain outstanding, the Examiner is respectfully requested to

contact Applicant's undersigned attorney in an effort to resolve such issues and advance the case to issue.

The other claims in this application are each dependent from one or another of the independent claims discussed above and are therefore believed patentable for the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, however, the individual reconsideration of the patentability of each on its own merits is respectfully requested.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should be directed to our address given below.

Respectfully submitted,


Raymond R. Mandra
Attorney for Applicants
Registration No. 34,382

FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112-3801
Facsimile: (212) 218-2200

NY_Main 487847_1